

**DURHAM POLICE DEPARTMENT RESPONSE TO ALLEGATIONS OF  
RACIAL PROFILING AND BIAS-BASED POLICING**

**Follow-up Report to the Durham City Manager**

**Prepared By:**

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## **Introduction**

Over the course of this past year, the Durham Police Department has been the subject of accusations of racial profiling and discrimination in taking enforcement actions, or bias-based policing. Most of the critics, to include the N.A.A.C.P., the Southern Coalition for Social Justice; Fostering Alternative Drug Enforcement or F.A.D.E.; and other community groups and citizens have presented misleading data in support of these accusations. The N.A.A.C.P. publicly denounced what they described as troubling patterns of racial profiling and police misconduct; and an alleged lack of accountability and transparency. The N.A.A.C.P. went so far as to characterize the Durham Police Department as a broken system in need of repair. The Department respectfully disagrees with these mischaracterizations and has presented written and oral counter points to these assertions on previous occasions. This document accompanies a request for additional information from the City of Durham Human Relations Commission and responds to some commentary in the coalition's most recent public statements. The coalition presented so many misrepresentations and points taken out of context that it would take too long to refute them all. The Department will not try to respond to each point made by the coalition; rather, the Department would encourage the readers to place its prior response(s) side-by-side with the coalition's public statement(s) and judge for themselves. However, the Department will respond to the more significant portions of the coalition's public statement below. It is the Department's hope that the information provided herein will both inform and enlighten the reader.

## **Information Requests from the City of Durham Human Relations Commission**

The City of Durham Human Relations Commission requested additional demographic information on Biased-Based Policing complaints and Warrantless Search and Seizure complaints filed against Durham Police Officers and demographic information regarding police shootings. As it pertains to police shootings, the data provided shows that since 2006 there have been a total of twenty-two (22) investigations of officer involved shootings – an average of just over two (2) per year (this includes one in-custody death investigation in 2013). In summary, these incidents involved six (6) Black officers, two (2) Hispanic officers, and seventeen (17) White officers. These incidents involved ten (10) Black citizens, seven (7) White citizens, and five (5) Hispanic citizens. There were eight (8) fatalities, nine (9) wounded, two (2) incidents involved no injuries, and one (1) self-inflicted fatal gunshot wound; and there were two (2) incidents where the officer was shot by the suspect.

There are a couple of important things to be noted about police shootings: **1)** the violator ALWAYS has the advantage of initiative. He or she knows what they are going to do and when. Officers have to react to the behavior of the violator – and initiated action is faster than reaction. Many police practices and tactics, some of which may be perceived as unpleasant or distasteful, are employed in an effort to mitigate this advantage held by the violator; **2)** officers don't create these encounters – the violators create the encounters. Consequently, the race of the violator is irrelevant to the responding officer. The officer is responding to the behavior of the violator. While it is unfortunate that the most recent shootings in Durham have involved men of color, the officers responded to the actions of these men – not their race.

With respect to the complaints of violations of the Department's **Bias-Based Policing** and **Warrantless Search and Seizure** policies: Since 2007 there have been a total of seventy (70) combined complaints involving seventy (70) Black citizens, three (3) White citizens, no Hispanic citizens, and six (6) generated internally by the chain of command within the Police Department. These complaints involved thirty-two (32) Black officers, eighty-five (85) White officers, and three (3) Hispanic officers. Some complaints had multiple complainants and multiple officers involved.

## **Citizen Complaints**

The Durham Police Department does not engage in cover-ups. The Department is always willing to take ownership of any wrongdoing committed by any of its members and this has been clearly demonstrated on multiple occasions. The NAACP has pointed to the low number of citizen complaints, and the perceived high number of internal complaints as problematic. The Department respectfully submits that the numbers are more indicative of a proactive administration that doesn't hesitate to discipline within its own ranks. This level of internal scrutiny might actually deter officers from committing acts that would lead to citizen complaints – hence the low numbers. Complaints shouldn't be taken at face value, that's why investigations are conducted. It is worth noting that filing a complaint is not a guarantee that the complainant is going to receive the outcome that they wish. It may come as a surprise to the layperson, but all complainants are not always totally forthcoming about the circumstances surrounding their encounter with an officer. Video evidence and independent witness statements have shown that some complainants embellish their stories for whatever reason.

In a recent presentation, the coalition used several citizens' encounters with Durham Police officers as examples of bias-based policing. Just as a point of clarification, on more than one occasion the Department requested some specifics from the coalition regarding these complaints that they investigated so that it could look into these matters and ensure that they received the proper attention and explanation. To date, that information has not been provided to the Department; however, the Department will respond here to what has been presented to the public.

Mr. Ragland's story was published in a local newspaper article and is well worth taking the time to clarify. Once again, the coalition only provided parts of the story. The incident occurred on Fayetteville Street in a shopping center parking lot. First, the officers didn't randomly approach the complainant – they were dispatched to investigate three suspicious vehicles and the complainant's vehicle was specifically described by the caller. The other two vehicles were gone upon the officers' arrival. Therefore, the complainant's race was not a factor in this encounter. Second, the passenger was arrested on an outstanding drug related warrant and the officers erroneously searched the vehicle based upon that arrest. Third, the officers did ask for consent and were denied, but they mistakenly operated under the search incident to arrest

doctrine – they didn’t need to ask for consent at all, but as you will see again later in this report, they asked anyway. Prior to a recent U.S. Supreme Court ruling, searching a vehicle upon the arrest of any occupant for any reason was a well-established and legal practice. The officers did not remember their legal updates and mistakenly took action based upon the prior principle. So while the complaint was sustained, as it should have been, it wasn’t sustained for violating the bias-based policing policy (racial profiling) but rather for other policy violations. The complainant’s race was a non-factor in both the encounter and the actions taken during the encounter. A few other important things to note about this incident are that the complainant expressed his displeasure with the officers but was not confrontational; the complainant exercised his right to file a complaint; the complaint was legitimate; the complaint was investigated and the officers were found to be wrong. **The complainant engaged in the system and it worked.**

In the case of Mr. Woods, he was stopped after exhibiting what the officer believed was suspicious driving behavior in a known drug area. Robert L. Farb (2003) points out that the U. S. Supreme court has noted that, “Wholly lawful conduct may constitute reasonable suspicion.” Without belaboring the details, the officer initiated a traffic stop; Mr. Woods immediately initiated a hostile and aggressive confrontation with the officer as evidenced by a video; force was applied and an arrest was made. Mr. Woods also exercised his right to file a complaint and in a closely decided decision it was sustained against the officer. **The complainant engaged in the system and it worked.**

In the case of Mr. Black, this complaint was filed on his behalf by a third-party. Mr. Black was a passenger in a vehicle with several other people. It is true that the occupants stated that they believed that they were stopped because they were black. While it is true that the officer knew the criminal histories of the occupants and they were in a known drug area, the vehicle was actually stopped for a legitimate traffic violation which was corroborated by the statement of the driver. Additionally, none of the vehicle occupants provided any statements complaining about the officers’ behavior as was alleged in the complaint. The complaint was thoroughly and fairly investigated; however, it was not sustained against the officer.

In the case of Mr. Gilliard, his allegation is several years old and after being contacted he has failed to provide any information to the Department that would allow a follow-up investigation to be completed.

In any event, there is more to these examples than the coalition has presented and in two of these examples the system worked in the complainant's favor. Consequently, there are a few points worth mentioning: just because a complaint is filed does not mean that it should automatically be sustained against an officer; just because the complainant happens to be Black, Latino, Asian, etc. doesn't mean their race or ethnicity is the basis for the police encounter or the subsequent action(s) taken; just because some citizens CHOOSE not to utilize a system that is in place to assist them doesn't make that system bad or wrong; and just because a complainant doesn't receive the outcome that they wish does not mean that the system is flawed.

Finally, the allegations of a broad sweeping problem within the department, and growing community concern are not supported by the facts. When you look at the number of citizen encounters with Durham Police Officers and compare that to the number of complaints filed with the department, complaints filed via the Durham City Manager's Office, and complainants solicited by the coalition – the information is overwhelmingly indicative of positive encounters. **For the period from 2008 thru 2013, there were 1,329,400 police service calls where an officer interacted with a citizen in some way.** This includes calls handled by officers via telephone, traffic stops, calls initiated by the officers themselves, and 911 calls for service from citizens. **During this same six-year period there were 712 complaints filed against Durham Police officers by citizens.** This figure includes complaints filed with the Department; complaints that were classified as Citizen Concerns because there was clearly no policy, behavior, or legal violation; complaints filed through the Durham City Manager's Office; and the total number of persons who spoke at the various Human Relations Commission meetings surrounding this issue. This means that only about .054% of all encounters between a citizen and a Durham Police officer in the past six years resulted in some negative feeling on the part of the citizen – five hundredths of a percent. **In other words roughly 99.95% of all contacts between Durham Police officers and citizens during this period were positive or at least neutral.** To be sure there may be some citizens who chose not to bother complaining, but there would need to be over twelve-thousand additional unknown complainants to even equal one

percent (1%). As anyone can readily see, the overwhelming majority of citizen encounters with Durham Police officers (99.95%) are positive or at least neutral. When you combine this data with the fact that during 2013, District Commanders attended over 150 community meetings and these issues were never raised; that these issues were not raised during the numerous PAC meetings throughout the year; that these issues were not raised during any of the Coffee With Council meetings – it is evident that there is nothing indicative of a broad community concern as it has been alleged. This is not to imply in any way that the small number of complaints diminishes their importance or impact, but to expect much better than 99% satisfaction is asking for perfection which is not reasonable – none of us are perfect.



## **Assessing Racial Profiling**

The Department has spoken to the complexities of assessing for bias in policing on several occasions and has cited subject matter experts who support its position. While this has been addressed, it is well worth repeating: While the data presented does show a disparity, it is not sufficient to substantiate the allegations being made. Dr. Lorie Fridell, a former Director of Research at the Police Executive Research Forum (PERF), is a national expert on racially biased policing. She has authored and co-authored a number of chapters and books on the topic. After being educated by the social psychologists who study human biases, Dr. Fridell developed the “Fair and Impartial Policing” perspective based on that science. With funding from the U.S. Department of Justice and with assistance from national experts on law enforcement and the social psychology of bias, Dr. Fridell has produced science-based Fair and Impartial Policing curriculums for both recruits/patrol officers and first-line supervisors. Dr. Fridell (2005), who is cited extensively in this response, spoke to both the potential and the constraints of data collection on this subject. She stressed the need for stakeholders, i.e. the police and the community, to know what conclusions can and cannot be drawn from the data. Dr. Fridell goes on to write about the responsibilities of advocacy groups and quotes Ron Davis (quoted in McMahon et al. 2002, 96):

**“Civil rights and community-based organizations . . . have the responsibility of obtaining ‘expert’ knowledge and understanding about racial profiling, biased-based policing, and data collection and analysis before launching discrimination allegations. It is a disservice to the community for reputable organizations, whether civil rights or community-based, to accuse law enforcement of racism and/or discrimination based on statistical disparities or the implementation of non-bias traffic enforcement programs.”**

Dr. Fridell (2005) confirms a point that the Department has been trying to make; “Quality analysis of vehicle stop data is not as simple as comparing vehicle stop information to basic census information . . . data collection cannot provide unequivocal answers to questions about the existence or lack of racial bias by police in a jurisdiction.”

The Department has not denied the numerical disparities highlighted by the coalition, but it has challenged the allegations of discrimination, racial profiling, and bias-based policing. The Department has questioned the rush to judgment that the sole cause of the disparities is discrimination. Dr. Fridell (2005) is cited again: **“To determine causality, however, we must exclude or “control for” rival causal factors – factors other than the race/ethnicity of the driver – that could explain police stopping decisions.”** The Department respectfully submits that the same logic must be equally applied to search disparities as well. The coalition’s analysis of the disparities lacks any attempt to address some critical pieces of information regarding who is stopped and or searched and why. The Department respectfully submits, and the literature supports this position, that a proper assessment requires, among other things, a proper benchmark population. According to Fridell (2005), **the researcher’s goal is to develop a racial/ethnic profile of the people who should be at risk of being stopped by police in a jurisdiction, assuming no bias.** Benchmarking is the essential tool used by researchers to achieve this goal. Benchmark quality is directly related to how closely each benchmark represents the group of people who should be at risk of being stopped by police if no bias exists. Dr. Fridell (2005) also pointed out that, **“If that same researcher used instead U.S. Decennial Census data to develop a demographic profile of people who live in the jurisdiction, the researcher has produced a benchmark that does not represent well the people at risk of being stopped by police if no bias exists.”** The data being put forth by the coalition falls well short of the standard suggested by subject matter experts. The fact that the entire general population doesn’t drive, is just one reason it can’t accurately be utilized as a proper benchmark. A proper analytical approach would require determining a benchmark population of drivers who commit traffic violations thus putting themselves at risk of being stopped. Analysis based on such a population would be more effective in illustrating racial bias among those who actually commit driving offenses.

Another flaw that the Department has pointed out is the coalition’s dismissal of any possibilities other than bias to possibly account for these disparities. The Department again finds support in the literature. Dr. Fridell (2005) refers to these other possibilities as “competing alternative hypotheses” – hypotheses other than police bias. One must consider these hypotheses when analyzing a jurisdiction’s police-citizen contact data. These hypotheses reflect drivers’ driving quantity, quality, and location – the key factors that could legitimately influence whom

police stop. We submit again that it is these other factors or hypotheses that the coalition refuses to even consider let alone rule out. Dr. Fridell (2005) outlined these hypotheses as follows:

- **Racial/ethnic groups are not equally represented as residents in the jurisdiction.**
- **Racial/ethnic groups are not equally represented as drivers on jurisdiction roads.**
- **Racial/ethnic groups are not equivalent in the nature and extent of their traffic law-violating behavior.**
- **Racial/ethnic groups are not equally represented as drivers on roads where stopping activity by police is high.**

**Researchers cannot presume that no differences exist between racial/ethnic groups in the quantity, quality, and location of their driving.** The coalition has made just such a presumption and it is the fatal flaw in their research and accusations. The coalition also fails to consider that the population figures that they use are inconsistent for another reason – the transient and commuter make-up of the motoring public in Durham. Our city is home to two Division-I universities with large student populations. Additionally, two major interstate highways have lengthy and busy stretches that run through our city as well. It is certainly reasonable to believe that such traffic would significantly impact a proper benchmark using the motoring public rather than the general population of residents.

Dr. Fridell (2005) points out that there is evidence that racial/ethnic groups differ in the amount of their driving and racial/ethnic groups may not be equally represented among the nonresidents who drive in the jurisdiction. The influx of nonresident drivers will be particularly significant in the big cities that draw commuters in from surrounding jurisdictions, especially during the daytime hours. The Department respectfully submits that Durham certainly qualifies as an example of just such a city when you combine the diverse employment opportunities, two universities and a community college, world-class medical facilities and clinics, and a rapidly growing dining and entertainment hub downtown. As Dr. Fridell (2005) points out, **“These nonresident drivers will affect the demographic profile of drivers on the roads of the target jurisdiction.”** While it is well established that quality research on driving behavior and race/ethnicity is scarce, Dr. Fridell (2005) points out that the absence of this research prohibits us

from ruling out the possibility of racial/ethnic differences in the nature and extent of law-violating behavior. **Theoretically, driving behavior is quite relevant to decisions by police to stop drivers, and the research that has been conducted on the relationship between driving quality and race/ethnicity is not sufficient for us to assume no differences across groups.** Youthfulness has been linked to law-violating behavior. Disproportional numbers of young drivers in racial/ethnic groups in a jurisdiction can produce misleading results. People who drive in areas where stopping activity by police is high are at greater risk of being stopped than are people who drive in areas with low stopping activity. The Department spends considerable resources in crime suppression activities in challenged communities. A large component of these efforts is increased traffic enforcement in and around such communities. Unfortunately, these communities are often, but not always, predominantly black. Dr. Fridell (2005) warns us about the dangers of employing census data as a benchmark as the coalition has done; **“Misleading results are obtained when the absolute number of stops across areas are summed, and the demographic profile of the drivers who are stopped is compared to the demographic profile of the residential population.”** Dr. Fridell goes on to say: “Researchers’ failure to address the alternative hypotheses can lead to inconclusive results . . . census benchmarking . . . compares the demographic profile of the drivers stopped by police to the demographic profile of the residents of the jurisdiction as measured by the U.S. Decennial Census. Regardless of the results of this comparison . . . researchers can draw no definitive conclusions regarding racially biased policing.” The Department respects the right of any group to have concerns and to express them, but it denies any pattern, practice, or culture of biased-based policing and submits that the data that has been presented thus far is not proof of such practices.

## **Vehicle Searches in General**

The coalition has repeatedly drawn attention to the disparities in searches conducted pursuant to traffic stops and submitted various statistics regarding same. It is worth noting that in many instances, presentation directly affects the impact of data. **The Department reviewed its state submitted traffic stop data for the period from 2008 through 2012.** The coalition has access to this same data set. During this five-year period there were **142,180 Traffic Stop forms filed** by members of the Durham Police Department. These forms involved **162,366 total drivers and passengers.** According to the data submitted to the State, **a vehicle search was conducted in only 6,327 of these stops – that is to say that only 4.45% of the total number of traffic stops involved a search of any kind during that five-year period. To put it another way, 95.55% of all drivers contacted on a traffic stop, and 93.67% of all occupants, were not searched during this period.** So keep in mind that **when the coalition refers to these search disparities they are talking about percentages of a small percentage.** Please also note that officers will often have probable cause but will ask for consent even though they don't need to – this is an investigative practice and it provides another small indicator of the motorists' culpability, or lack thereof, in any criminal activity. Another thing to note is that more than one type of search can be selected simultaneously on traffic stop forms. The Department found that some officers were selecting more than one type of search on the same form. When more than one type of search is selected, the search is counted twice by the state, thus some portion of consent searches may actually be one of the other categories such as probable cause.

Of the 162,366 occupants, 58.88% were black and 38.64% were white, with roughly a third of the white occupants being of Hispanic ethnicity. **Thus, the larger percentage of stops involved black occupants initially** – just by extension this will impact the search percentages. The 6,327 vehicle searches involved 10,279 total vehicle occupants. The coalition has pointed out that, “In a city that is only 41% black, African-Americans are searched at more than twice their representation in the overall Durham population.” The Department pointed out in a previous response and does so again here that this population metric serves no purpose as it pertains to any type of reasonable or accurate analysis. Dr. Fridell (2005) speaks directly to this

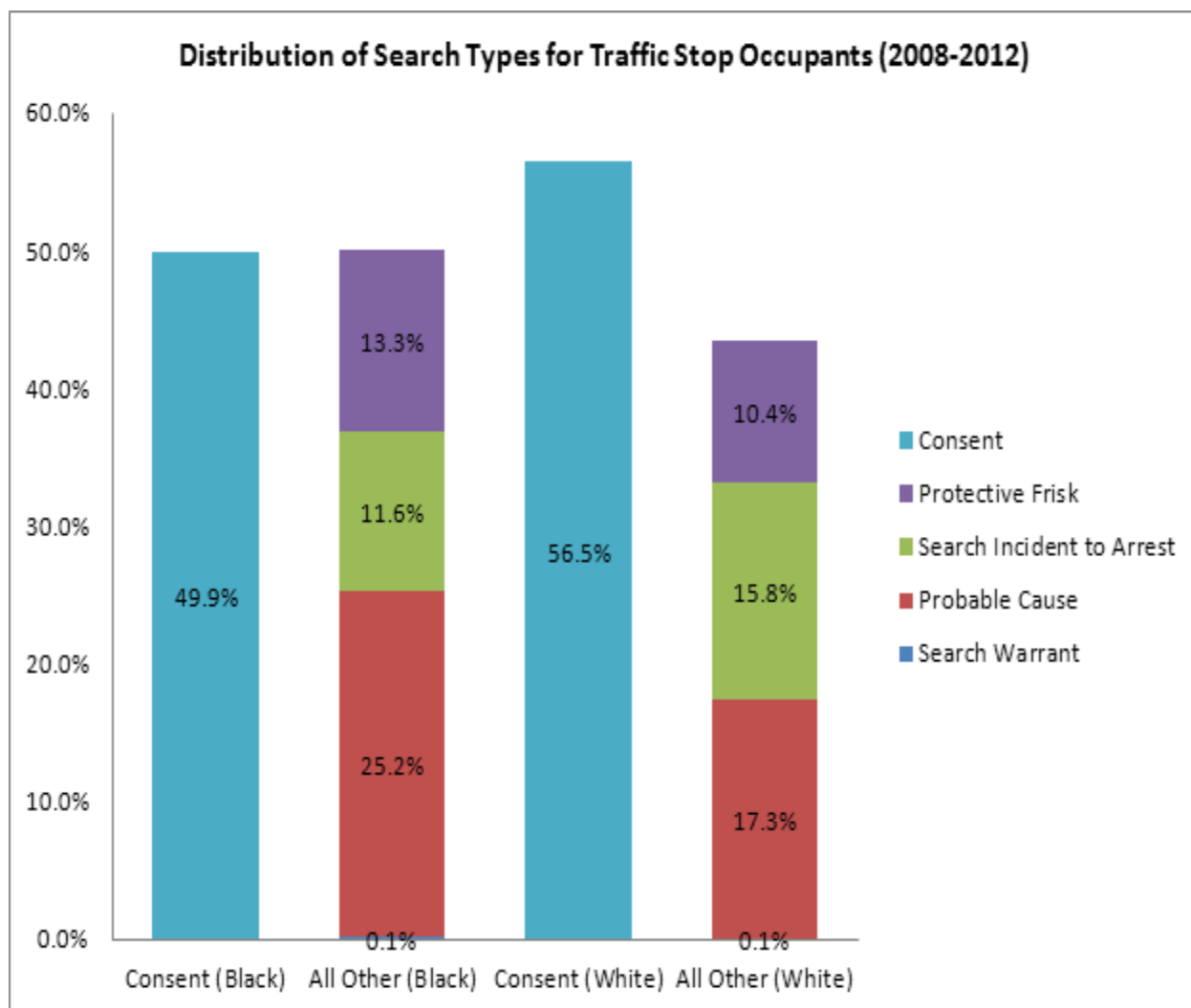
subject when she writes about the danger of utilizing census data for analytical purposes regarding traffic stops and the same principle is reiterated with respect to searches:

**“Percent searched measures are produced by calculating for each racial/ethnic group the percentage of stopped drivers who are searched. . . These percentages are often used erroneously to draw conclusions regarding racial bias. . . Percent searched information may show disparity, but it cannot identify the cause of disparity between searches of racial/ethnic groups, or relatedly, whether or not the disparity is justified. Not every person who is detained is at equal risk of being searched by police . . . Indeed, the public should not expect equal proportions across stopped groups (2005).”**

The Department cannot deny the disparity; however, the Department does deny bias as the reason for the disparity and submits that other factors must be considered when assessing this subject just as they must be considered with respect to traffic stops. When looking at the raw data we can clearly see that out of the **4.45%** of all traffic stops where searches were conducted, black occupants (driver and passenger) were searched at higher rates than whites in direct comparisons – but is that all that the numbers illustrate?

The following chart illustrates the breakdown of the types of searches that were conducted during this five-year period. Keep in mind that these figures are smaller percentages of the 4.45% of all stopped vehicles that were actually searched. When black occupants were searched, 49.9% of those searches were based on consent; the remaining 50.1% of searches were a combination of probable cause, search incident to arrest, and protective frisks. Thus the reasoning for searches of black occupants is not solely based on consent. The searches based on probable cause and incident to arrest can't be ignored – any officer failing to search under those circumstances would be irresponsible. Note that the percentage of searches of white occupants based on consent is in greater proportion compared to black motorists. Note that consent searches of white occupants are comparatively greater than the other combined reasons for searching black occupants as well. Note that the searches of white occupants based on the combination of probable cause, search incident to arrest, and protective frisks are comparatively lower than the same grouping of searches for black occupants. Note that probable cause existed

in a comparatively greater proportion of searches of black occupants as compared to white occupants.



The reader is reminded again that what are being discussed are percentages of the 4.45% of all of the traffic stops conducted during a five-year period. The disparity is there, but the data that the coalition neglected to expound upon does not suggest a sweeping problem as has been presented; and it further suggests that there are reasons other than racial bias that could account for the disparity. Dr. Fridell (2005) points out that **small sample sizes produce unreliable results. When a researcher is dealing with very high or very low percentages of minorities (or of Caucasians), the selection of one measure over another will lead to very different interpretations of the results.** Clearly, the measure chosen makes a difference in terms of the level of disparity indicated. The coalition has proclaimed repeatedly that black motorists are

consent searched at greater rates than white motorists. The same data set, viewed differently, suggests black motorists are consent searched at a comparatively lower rate than white motorists. The presentation affects the interpretation and the impact.

Those of us who have a stake in the results of racial profiling analysis, to include the Police Department, are seeking definitive answers about whether policing in our jurisdiction is racially biased, but as Dr. Fridell (2005) points out, those definitive answers cannot be given. **The reason is the impossibility of ruling out all of the legitimate (non-bias) factors influencing police decisions to stop a vehicle, conduct a search, or give a disposition.** Benchmarking analysis can signal the possibility of biased policing, motivate jurisdictions to explore policing practices, and improve relations between police and the community. Definitive conclusions, however, cannot be drawn from the results. This is the only point the Department has ever tried to make – that the coalition has repeatedly provided accusations without substantive proof. The data was certainly worthy of discussion and further investigation, which has occurred, but it didn't rise to the level of broad public accusations of discrimination.

In a presentation dated January 22, 2014 the coalition called into question the use of 'suspicious' behavior or acts as a basis for asking for a consent to search. The coalition cited U.S. v. Foster, 634 F.3d 243, 248-49 (4<sup>th</sup> Cir. 2011) and quoted in part, "[We] note our concern about the inclination of the Government toward using whatever facts are present, no matter how innocent, as indicia of suspicious activity. . .[An] officer . . . must do more than simply label a behavior as 'suspicious' to make it so. . ." In this case out of Henderson, North Carolina, the court ruled in favor of the defendant because the officer was clearly in error, although no maliciousness was noted or implied; the system worked for the defendant as it should have. This presentation might lead a citizen to believe that officers can arbitrarily label any behavior as suspicions; in fact, nothing is further from the truth. The factors that the courts have to consider when determining whether an officer has reasonable suspicion are outlined in Farb (2003) and include but are not exclusive to the following:

- The officer's observation of conduct that in light of the officer's training and experience appears to be criminal.
- The time of day or night.
- Information the officer receives from other officers, citizens, or informants.



- Whether the area is a high-crime area.
- The suspect's proximity to a location where a crime was recently committed to a home, car, or business where criminal activity may be taking place.
- Whether the suspect is a stranger to the area.
- The suspect's reaction to the officer's presence, including flight after seeing the officer.
- The officer's knowledge of the suspect's prior criminal record and activities, if they are relevant to the crime the suspect may be committing.
- The suspect's flight from the scene of a crime.

Officers are trained that they must be able to specifically articulate these factors or any combination thereof, to justify reasonable suspicion. Key points to note are that **the courts have recognized that these factors must be viewed from the perspective of a trained officer; they must be viewed in their totality; and otherwise innocent behavior may be cause for suspicion; for example:**

- Illinois v. Wardlow: The court ruled that defendant's unprovoked flight on seeing officers and his presence in an area of heavy drug trafficking provided reasonable suspicion to stop the defendant.
- United States v. Sokolow: The court stated that its analysis of whether reasonable suspicion existed was not adversely affected by the agents belief . . . that his behavior was consistent with the drug courier profile . . . requires some minimum level of objective justification considering the totality of the circumstances . . . Court concluded that although any one of the factors described is not proof of illegal conduct and is quite consistent with innocent behavior, **wholly lawful conduct may constitute reasonable suspicion.**
- United States v. Sharpe: These facts, taken together **as appraised by an experienced officer**, provided clear justification to stop the vehicles and to pursue a limited investigation.
- State v. Butler: The North Carolina Supreme Court ruled that the facts were sufficient, **when taken in their totality**, to provide a reasonable suspicion to stop the defendant to investigate drug activity and to frisk him for weapons.

Officers are trained extensively on these and other Fourth Amendment issues during the academy and during field training; however, mistakes are still made, violations occasionally occur and the Department has clearly demonstrated a willingness to discipline its officers for such violations.

In a handout dated January 22, 2014 the coalition stated, “DPD has instructed officers how to write reports in order to retroactively justify borderline stops” and the coalition provided an excerpt from a purported report writing manual. **This presentation might lead a citizen to believe that the Department trains officers how to be deceitful in their reporting; this is absolutely not true!** Officers are trained to write police reports that document the facts as they receive them in a clear, concise but thorough manner and some officers do this better than others. In an effort to provide some consistency and clarity in reporting writing, some supervisors have put together unofficial guide-sheets on how to write various types of report narratives. The goal is to aid officers in documenting the facts in a concise manner while capturing all of the key information. For example, when documenting the need to use force on a combative arrestee, officers are taught to particularly describe the specific actions/behaviors/verbiage that justified the need to use force versus simply writing that the arrestee was belligerent. If you look at most police reports, the majority of them begin in a similar fashion – almost like a template. Reports completed by investigators might be a little more detailed, etc. The document that was presented is not an official Durham Police Department document. It was created by a former supervisor and was nothing more than a guide-sheet on how to thoroughly articulate specific facts and behaviors that constitute reasonable suspicion, probable cause, etc. **It should not in any way be construed or represented as a tool of deception and any such representation is wholly inaccurate.**

## **Consent Searches**

The Fourth Amendment permits various kinds of searches to protect people and property in circumstances that present particular threats of injury to people and damage to property. Ordinarily, these searches need not be justified by probable cause or a search warrant. Instead, they are considered reasonable under the Fourth Amendment if the government's legitimate interest in protecting people or property outweigh the intrusion on a person's privacy interests (Farb, 2003). The Department respects the right of any person or group to disagree with a particular police practice and will be the first to defend their right to do so; however, disagreement with a particular practice does not make that practice wrong. With respect to consent searches, the coalition has described them as needless, warrantless, and abusive. The coalition highlighted the low "hit-rate", or discovery of contraband. The Department refers back to Dr. Fridell's (2005) expert opinion, **"Lower hit rates for minorities for evidence-based searches . . . are not conclusive evidence of bias . . . Legitimate factors unrelated to bias can produce lower hit rates for minorities, and biased police actions can produce equal hit rates in certain circumstances. Researchers should consider these factors or circumstances when interpreting hit rate results."** While it may very well be true that some officer or officers may base their request for consent on race, the Department submits that it is not the broad behavior alluded to by the coalition. The coalition has highlighted the fact that Durham Police Officers search vehicles at a higher rate than other agencies across the state. **Keep in mind that Durham Police Officers only searched 6,327 vehicles out of 142,180 over the last five years, or 4.45% of all vehicles stopped.** It is inappropriate to characterize hard work as something undesirable. The Department encourages its officers to be proactive and to investigate when something that is said or done during an encounter raises their suspicion(s). This type of investigative effort leads to the discovery of the identities of potential suspects, contraband, weapons, evidence of possible criminal activity, and fugitives. The coalition points to the low hit-rate as an indicator of inefficiency. The Department would submit that this investigative effort serves more than one purpose, and less investigative effort would not serve this community well. As one example, during the early morning hours of December 20, 2013 a Durham Police Officer stopped a car for an expired registration plate. That officer could have just written the ticket and moved on, but instead he investigated further. The officer found that the male passenger was wanted for a bank robbery committed just two days prior in South Carolina. The female passenger (his girlfriend)

was an absconder from the Department of Corrections. No one knows what or how many crimes this officer prevented by investigating beyond the ticket. If this officer never finds another item of contraband during another search, this outcome was worth the effort. The Department would submit that the victims of crime, who are able to receive some closure based on evidence gained via a consent search, would disagree with the coalition's characterization of these searches. The hit-rate is less important to the community than the clear message being sent to criminals that the Durham Police Department is going to thoroughly investigate suspicious persons and behavior and that those criminals cannot transport weapons and drugs along the roadways with impunity or commit various other crimes in the community.

Every vehicle stop won't lead to a consent search – remember, **only 4.45% of all traffic stops from 2008 thru 2012 led to any type of search.** The average law-abiding citizen generally won't provide any reason to ask for consent, but sometimes subtle cues are seen or heard that pique an officer's interest. As Richard Ashton (2007) wrote, "Competent and dedicated police officers legitimately detect anomalies during traffic stops and alertly connect the dots to solve more serious crimes." An officer's suspicions might be raised by evasive or inconsistent answers to simple questions; by items observed in the car that might suggest criminal/drug activity; by information associated with the vehicle itself such as the owner having a history of violence, drugs, or weapons; or the vehicle having been described as the suspect vehicle in a crime, etc.

Most people outside of law enforcement find it very difficult to believe that a person with contraband in their car or on their person would say 'yes' to a request for a consent search, but it happens regularly. A valid consent must be voluntary and clearly expressed. It may not be coerced or given under duress so officers are well trained and well aware that they cannot bully people into consenting. If the motorist/violator feels that this was not the case, he or she has recourse via the court system and the Department's complaint process. The motorist/violator may present information to that effect in court and a judge will render a ruling. **As an additional safeguard for both the citizen and the officer, the Department's frontline patrol vehicles are equipped with cameras and the officers are required to wear personal microphones and record interactions during traffic stops.** The law-abiding citizen has nothing to fear from the police or from a consent search of their vehicle; however, the criminal should be wary

**of the possibility that the Durham Police Department will probe as far as legally possible whenever it appears appropriate.**

## **Consent to Search Forms**

**Consent to Search forms are not required under the law and the Department reiterates that consent can always be denied with or without a form – that is the law.** As stated in a previous response, the Department has a written consent form that is employed at the discretion of each individual officer based upon the totality of the circumstances. The coalition has taken issue with this assertion and made some very ugly, albeit veiled, accusations in one of their most recent public statements. For the record, many officers don't employ the forms on vehicle stops for a variety of reasons: Personal discretion; it's not required by law; the motorist is right on scene and can tell the officer to stop at any time; and it speeds up the process for the motorist who wants to cooperate but also really wants to be on his or her way. Another fact not commonly known outside of law enforcement is that many motorists will freely give verbal consent but will adamantly decline to sign a written consent to search form. Additionally, many officers will regularly employ the written consent to search form for consent searches of large commercial carry vehicles, residences or other real property.

With respect to mandatory use of a written consent form, the Department acknowledges that employing the form is not intrusive as a procedural issue; however, it may be an encumbrance as a tactical matter, and mandating its usage has the potential to demotivate the work group and train the criminals how to evade detection. Officers are given a considerable amount of discretion along with their powers and duties. This discretion avoids totalitarian enforcement decisions and works to the benefit of the system and the citizen. It is this discretion that allows warnings to be issued instead of citations in many cases. The Department, like many others, is less than comfortable with any policy recommendation that infringes on that discretion. Also, police officers are entrusted with enormous authority and responsibility; but they are human-beings first and subject to the same feelings and shortcomings of any other human-being. Instituting a mandatory form without some very solid evidence of a need to address wrongdoing sends a broad message to all officers that their word isn't trusted thereby damaging morale. Conducting consent searches is a discretionary activity. Sending such a message could serve to demotivate some officers and lead to fewer consent searches as a self-protective measure – and more missed opportunities to discover various crimes and evidence of crimes. Finally, it is not as simple as a 30-second signing of the form - the motorist needs to take the time read it to know

what they're signing in all fairness. This adds time to the encounter and may or may not lead to additional discussion which may further extend the motorists' detention and increase the motorists' agitation thereby increasing the potential for confrontation. Also, as noted earlier in this response, many motorists won't sign a written consent form but will give verbal consent.

It is well established legal doctrine that the motorist can deny and revoke consent at any time – that is the law; however, it is not the role of the police to give a roadside tutorial on consent searches thereby helping criminals evade detection. It is true that having one's vehicle searched is intrusive; however, **the innocent motorist has absolutely nothing to fear from a consent search. Introducing mandatory use of the form doesn't aid someone who already has nothing to fear, but it could aid criminals and it is not the role of the police to enable criminals to avoid detection.** The Department reiterates that the average citizen has nothing to fear from a consent search and they are free to decline. Should an officer exceed his or her authority, all the motorist need do is file a complaint and the Department will address the issue via the disciplinary process as it has already done on several occasions.

The coalition highlighted the Fayetteville Police Department as a success story about the benefits of mandatory consent to search forms. For the record, the independent consultants that investigated similar accusations within the Fayetteville Police Department acknowledged the disparity in their traffic stops and searches but also stated that it could not be blamed on bias. Fayetteville very publicly implemented the mandatory use of the Consent to Search Form in March of 2012. The coalition pointed out that Fayetteville officers significantly decreased the number of black motorists they searched between 2009 and 2012 and they allegedly recovered more guns and drugs pursuant to traffic searches. With respect to the increase in recoveries, once again the coalition provides no context for these figures. It could very well be that the apparent increase is nothing more than a change in the ratio. The same general number of hits could have been recorded but it would appear higher because there were fewer searches, thus changing the ratio; however, the coalition has again neglected to share these specifics. In this case, the coalition provides no contextual information as to what else might have contributed to the increase in recoveries of drugs and guns nor is the amount of the alleged increase specified. Did Fayetteville officers change their tactics or their deployment practices? Did they alter their training to improve the officers' skills? It is this type of contextual information that the coalition

continues to ignore. It is perplexing that the coalition didn't present the full picture of how this supposed increase was obtained. The Department consulted with the Fayetteville Police Department and it was discovered that prior to mandating the written form, the officers had probable cause in many cases but simply asked for consent also and documented both on the traffic stop forms. Once the consent searches decreased, what they saw was an increase in probable cause searches. This increase in the hit-rate may have had less to do with mandatory consent forms and more to do with more accurate documentation of the correct type of search.

With respect to the decrease in searches themselves, it may be that the intense scrutiny could have led to a phenomenon called de-policing on the part of the officers and they simply stopped conducting consent searches and other discretionary actions in order to avoid being unfairly labeled and complained on. This is not a new phenomenon and it has been nationally documented in other cities; and the impact on the community is wholly negative. For the record, this is an unofficial and inappropriate job practice; however, it is a very human response. No officer wants to be falsely referred to as a racist and potentially be exposed to frivolous complaints. Consequently, such controversies can lead to unwillingness to engage in discretionary proactive police work as a self-protective measure. It's easy to avoid a complaint by simply not conducting consent searches of black motorists. While the coalition might proclaim the decline in numbers as a victory, they are unconcerned with the potential impact on the community – the gun that is missed today may be used in a robbery, rape, or homicide tomorrow. You also run the very real risk of training criminals that the police are not going to search them if they stop them. How many weapons might have been missed because of the decrease in investigative policing and searches? How many crimes might have been deterred by investigative policing and searches? No one can say for certain if any, but one can safely say that criminals feel more comfortable carrying weapons and other contraband when they know that the police are less likely to investigate further.

Whether or not to initiate the mandatory use of a signed consent form is a choice – and it is a choice that should be made by subject matter experts, i.e. the police administration. The Department is not taking the position that it is a bad thing for law enforcement; on the contrary such a form definitely has its place - which is why the Department has one. The Department is simply not inclined to impose a mandatory use policy without there being some valid reason to



do so. The fact that other jurisdictions have chosen to implement such a practice is not a reason to blindly follow suit. The fact that the coalition has a concern and has raised some allegations is certainly worthy of consideration but not controlling. Policy changes should be made to either address a clearly identified problem or to improve operations and the Department sees no compelling reason to implement such a mandate at this time.

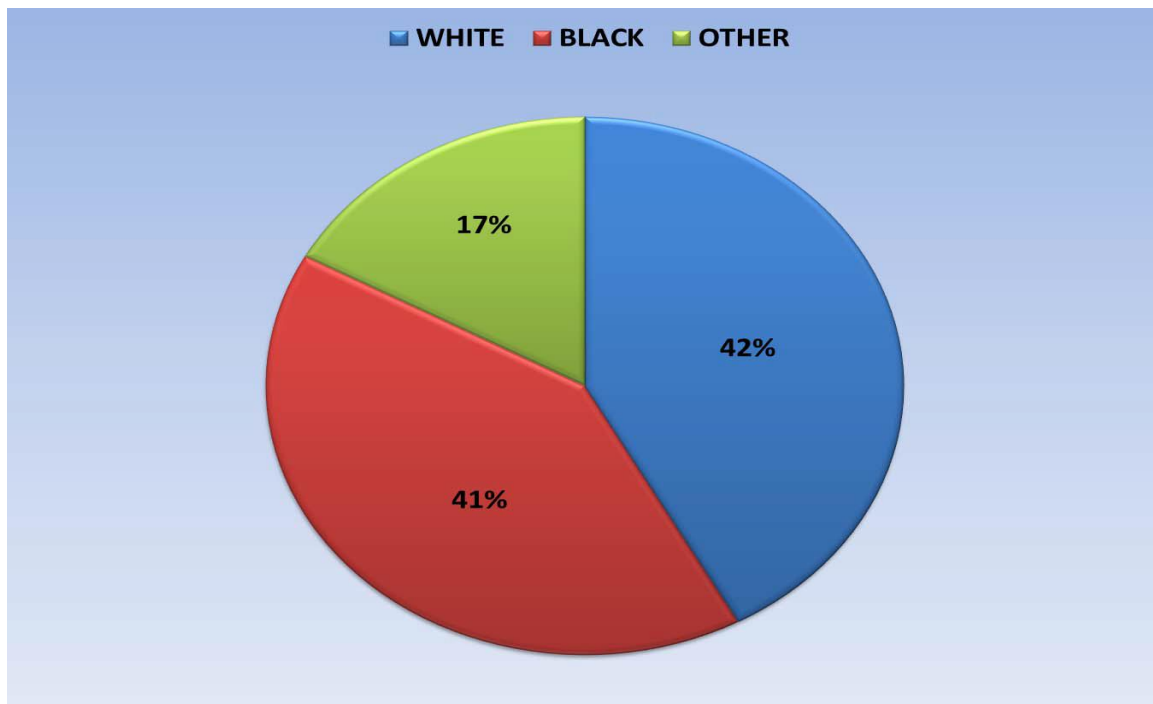
## Arrest Disparities

The coalition wrote in a recent public statement:

**“The department and the city need to take ownership of the fact that Durham’s Police Department consistently generates greater racial disparities in arrests than nearly any other police department in the State of North Carolina. To accept this as a function of race-neutral policing and criminal offending patterns is to believe that African-Americans in Durham are more criminally inclined than African-Americans elsewhere in North Carolina. There is no evidence that black residents of Durham are actually committing crimes nine times as often as whites, especially when whites outnumber blacks in the city.**

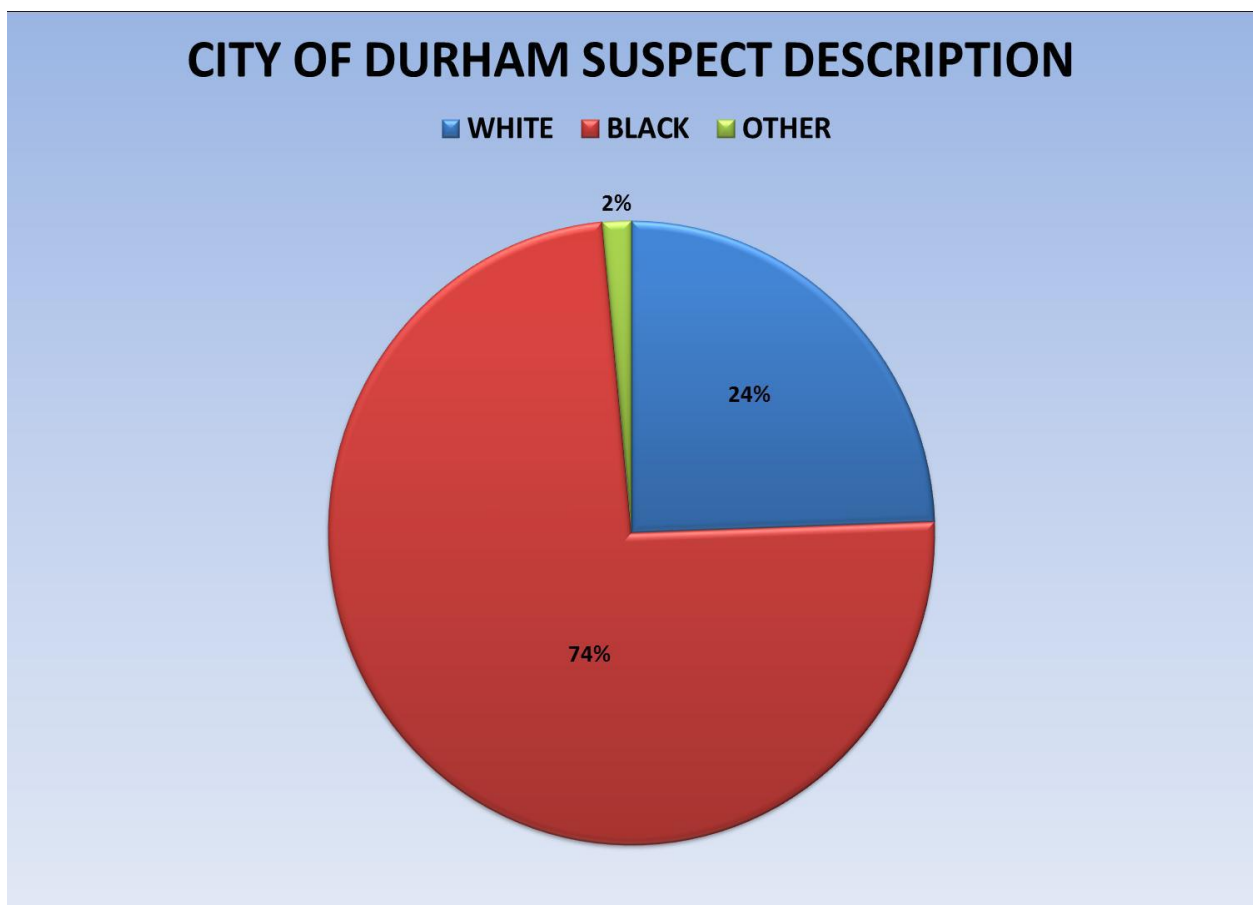
The Department spoke to this point in a recent presentation, but it can be addressed again. The Department’s officers make arrests based upon probable cause – nothing else. Unless someone is claiming that these arrests were false, the officers are doing solid police work. The Department reviewed its reports and prepared several charts and graphs which illustrate the citywide demographics of residents, arrestees, described suspects, and victims.

The following chart illustrates a rough demographic breakdown of the city.



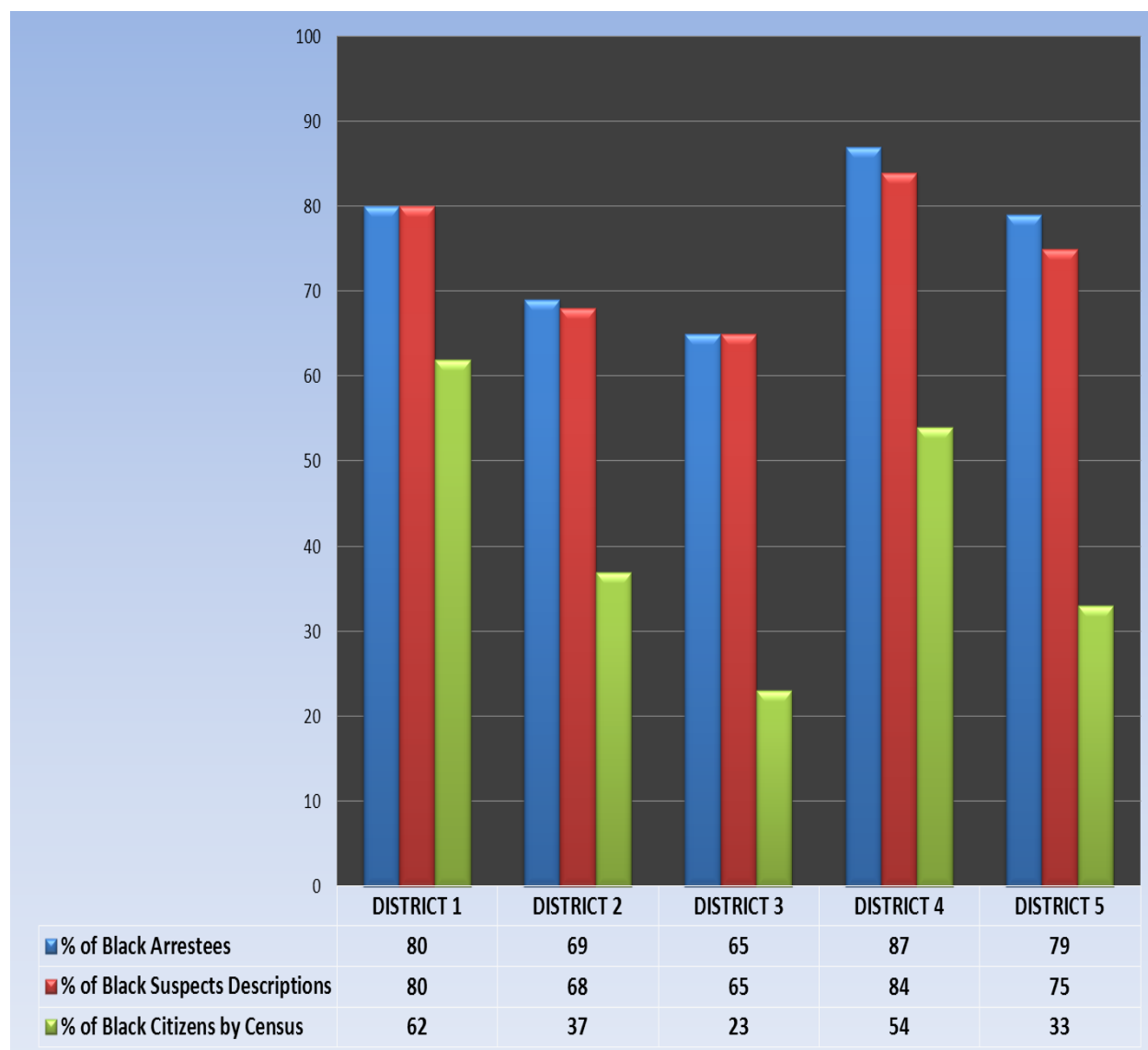
The chart shows that white citizens make up 42% of the general population, followed very closely by black citizens at 41%.

The chart below illustrates the described suspect information citywide. **These are descriptions provided only by the victims and witnesses of crimes.** This also includes individuals that have been identified/arrested at a later date since sometimes there isn't a suspect description when a report is written, but suspect information is added after an investigation/arrest. You will see that black described suspects exceed their percentage of the population significantly – and are three times that of white described suspects.



The following graph illustrates the black percentage of the population, the black percentage of arrestees, and the black described suspects. There is some overlap here between the suspect

group and the arrest group. Everyone in the arrest group is also in the suspect group, but not everyone in the suspect group is in the arrest group. When you compare the arrestees (blue) with the described suspects (red) and the census demographics (green) you can see that the Department's arrests align closely with the described suspect information. This suggests that the officers are making arrests based on the information available to them rather than some racist motivation.

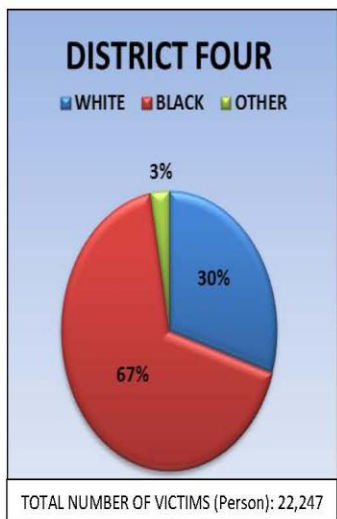
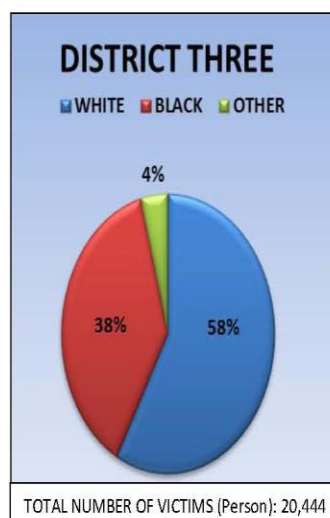
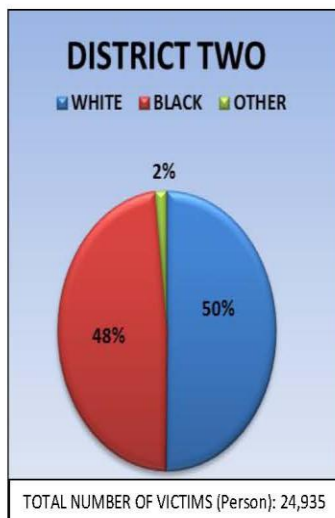
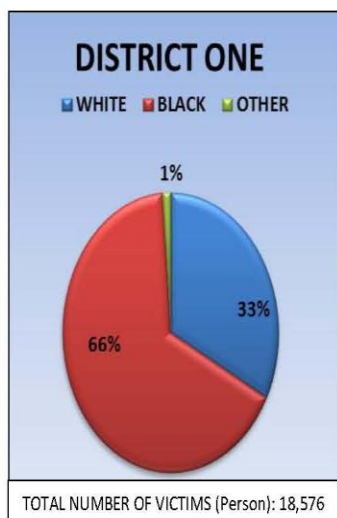


Note that in every district, the number of black described suspects exceeds their percentage of the general population. What is really telling is what happens to this graph when the victim information is added to the mix. The Department prepared the following chart showing the victim demographics across the various districts.



## City of Durham North Carolina

### Victim Racial Demographics by District 2008 to 2012

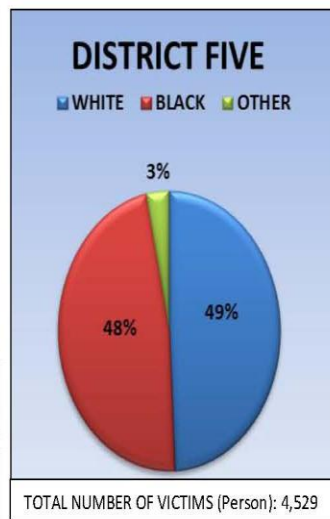


**VICTIM GENDER BY DISTRICT:**

<b>DISTRICT ONE:</b>	MALE (48%) FEMALE (52%)
<b>DISTRICT TWO:</b>	MALE (47%) FEMALE (53%)
<b>DISTRICT THREE:</b>	MALE (49%) FEMALE (51%)
<b>DISTRICT FOUR:</b>	MALE (48%) FEMALE (52%)
<b>DISTRICT FIVE:</b>	MALE (49%) FEMALE (51%)

The other category includes the racial groups: Asian, Indian, Unknown, and Other.

**ALL VICTIM TOTALS IN GRAPHS ARE INDIVIDUALS. THESE TOTALS DO NOT INCLUDE BUSINESSES, ETC.**



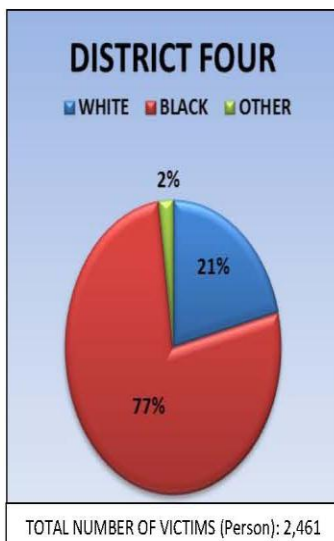
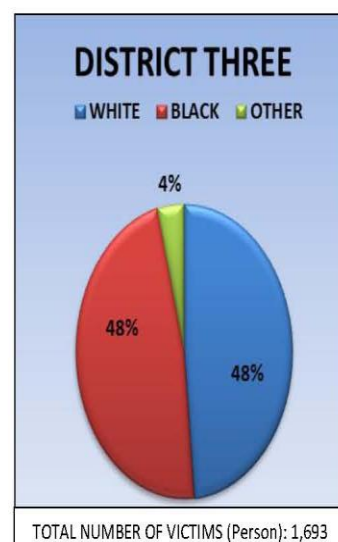
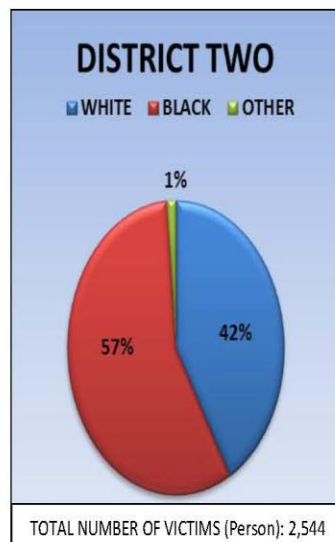
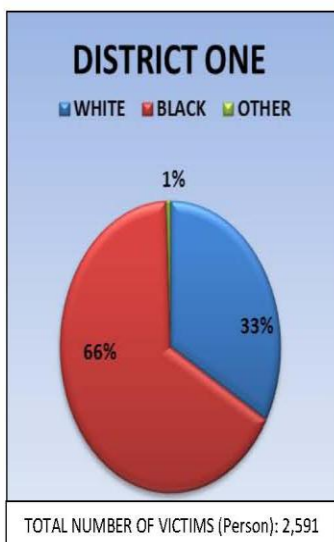
CITY OF DURHAM NORTH CAROLINA

What you see is that black citizens make up a large portion of the overall total victimization within the city. Once you isolate the Part 1 Violent Crime victimization, as the following chart does, the results are even more noticeable.



## City of Durham North Carolina

### UCR Part I Violent Crime Victim Demographics by District 2008 to 2012



**VICTIM GENDER BY DISTRICT:**

**DISTRICT ONE:** MALE (62%) FEMALE (38%)

**DISTRICT TWO:** MALE (60%) FEMALE (40%)

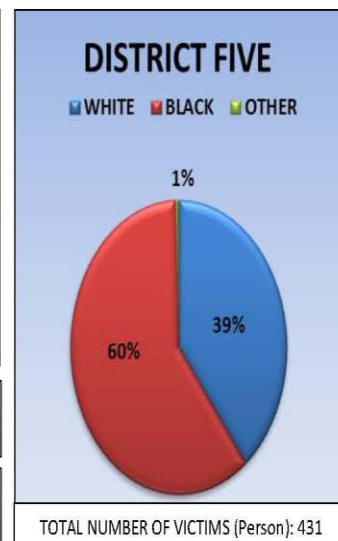
**DISTRICT THREE:** MALE (62%) FEMALE (38%)

**DISTRICT FOUR:** MALE (60%) FEMALE (40%)

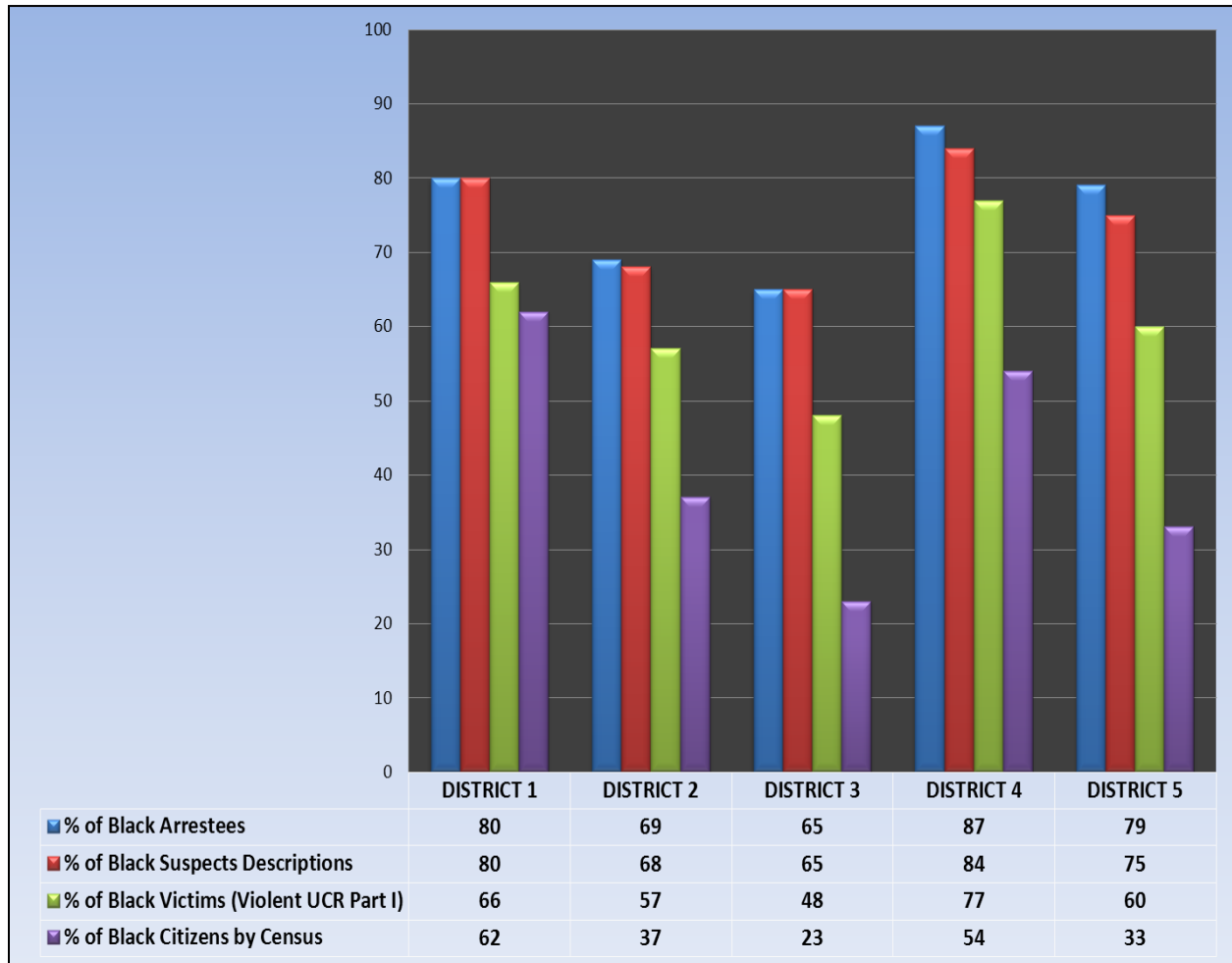
**DISTRICT FIVE:** MALE (68%) FEMALE (32%)

The other category includes the racial groups: Asian, Indian, Unknown, and Other.

**ALL VICTIM TOTALS IN GRAPHS ARE INDIVIDUALS. THESE TOTALS DO NOT INCLUDE BUSINESSES, ETC.**



As you can see, black citizens are the victims of violent crime at higher rates in all districts except one. Taking this theme a step further produces a bar graph showing the black percentages of the arrestees, described suspects, victims, and proportion of the general population.



It is readily evident that black suspect percentages and black victimization percentages exceed the black proportion of the general population. This might explain why the broader black community is not complaining about too much policing in their neighborhoods but are instead asking for more. It is perplexing that any social activist group professing to represent the best interests of the black community would attack a police department whose community outreach and enforcement efforts are attempting to address the needs of this same black community. These figures are illustrative in a much broader sense – they speak to the fact that **criminal**

**behavior, and the social disorder that accompanies it, is a multi-dimensional community-wide problem.** The Department would submit that a one-dimensional solution such as less policing will not address this problem and would be a disservice to a community that clearly needs attention.



## **Marijuana Enforcement and Arrests**

The coalition has repeatedly pointed out that blacks and whites use marijuana at essentially the same rates yet there is a significant racial disparity in arrest rates. References have been made to the National Survey on Drug Use and Health (NSDUH) conducted by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration in 2010 as well as a report produced by the American Civil Liberties Union (ACLU) entitled “The War on Marijuana in Black and White”. While the ACLU (2013, p. 66) reported that, “Among all age groups since 2001, use by Blacks of marijuana in the past 12 months is slightly higher than use by Whites,” the NSDUH report indicates little statistical difference in usage rates between Blacks and Whites. The Department’s position is that it is inappropriate to apply the findings of a national study to any local population. The NSDUH study was designed to be representative of drug use within the population of the United States (a research group), not the City of Durham (an individual unit within the research group). According to a researcher consulted on this issue, one cannot automatically assume that the population of Durham has the same demographic make-up as that of the United States. Additionally, there might also be significant differences in educational levels, income levels, marriage rates, and any other number of demographic factors that could contribute to different offending rates. Consequently, it is not reasonable to assume that statistics based on a representative national sample should automatically apply to any individual local area such as Durham. The Department finds support for this position in research literature:

- Dr. William Trochim (2006) wrote, “A fallacy is an error in reasoning, usually based on mistaken assumptions . . . The **ecological fallacy** occurs when you make conclusions about individuals based only on analyses of group data. . . An **exception fallacy** . . . occurs when you reach a group conclusion on the basis of exceptional cases.”
- Earl Babbie (2013) wrote in his textbook on social research that, “The **ecological fallacy** is an assumption that something learned about an ecological unit says something about the individuals making up that unit.”

- Dr. Jerry Ratcliffe writes, “The **ecological fallacy** . . . when a researcher . . . makes an inference about an individual based on aggregate data for a group.”
- Dr. David Freedman (1999) wrote, “The ecological fallacy consists in thinking that relationships observed for groups necessarily hold for individuals.”

As an example, the group data would be the NSDUH study which represents the population of the United States and the individual would be any individual community, i.e. Durham. Barring a study specific to Durham, no one can accurately speak to usage rates across demographic categories in Durham. In point of fact, the usage rate is not relevant to arrests because arrests aren't made based on usage – they are made based on who is caught in possession at a particular point in time.

As it has stated previously, the Department does not engage in targeted marijuana enforcement. Officers conduct DRUG investigations based upon information obtained through observation and or other sources. For example, during a traffic stop officers don't ask the driver if they specifically have marijuana in their vehicle (unless of course they smell the odor of marijuana); they may ask the driver if there are any DRUGS in the vehicle. Officers don't arrest people because they use marijuana; they arrest people when they find them in possession of marijuana which is illegal under the law. There is no doubt that the arrest numbers for marijuana possession and other charges are significantly higher for Blacks than Whites; but to arbitrarily assume that it is due to institution-wide racist motives, to the exclusion of any other possibility, is irresponsible, inaccurate, unfair and inflammatory. The overwhelming majority of all marijuana arrests made by Durham Police officers over the past five years were for simple possession. While the vast majority of those arrested were black, there is no way for any officer to have specifically targeted any individual for arrest for simple possession of marijuana. As stated previously, officers make such arrests during investigations or other encounters; by acting on information received from a variety of sources; and based on discovery during traffic stops, etc. Officers issue marijuana charges against the people they happen to find in possession of marijuana; unfortunately, officers are not coming across Blacks and Whites in possession of marijuana in equal numbers.

The coalition has also alleged that the Department targets Black neighborhoods and they produced several pieces of documentation, including an informant fund voucher for a ten dollar undercover marijuana buy, as proof of ‘low-level’ targeted marijuana enforcement. **First**, investigating drug offenses, whether large or small, is an expected role for any Police Department. The fact that the Office of National Drug Control Policy (2011) has designated Durham County as part of a High Intensity Drug Trafficking Area highlights the need for such work; and minimizing this work or the need for it only serves to benefit criminals. **Almost all major drug arrests of large-scale dealers, traffickers, and criminal groups begin with a single drug buy somewhere.** Small drug buys are just one of several tools employed in the investigation of drug dealers and traffickers. The Department does not wish to empower criminals by exposing the nuances of narcotics investigations here. Suffice it to say that such small buys are just links in an investigative chain to get to larger sellers and traffickers; and such buys are a well-established and legal investigative method.

**Second**, investigations of drug dealers are based on information gathered from a variety of sources. In other words, the investigation goes where the information leads it. If the information indicates the dealer is selling marijuana it’s considered a **DRUG** investigation; if the information indicates the dealer is selling prescription pills it’s considered a **DRUG** investigation; if the information indicates the dealer is selling crack cocaine, heroin, other narcotics it’s considered a **DRUG** investigation.

**Third**, while some drug dealers specialize in one specific product, all drug dealers don’t. Many drug dealers are opportunists who sell a variety of illegal narcotics; the occasional firearm; and dabble in other items and crimes because their ultimate goal is to make as much money as they can in any way that they can. Another thing to remember is that drug dealers are only present where there is a demand for drugs.

**Finally**, let’s not forget that MANY drug users feed their habits by committing other crimes such as shoplifting; breaking into homes/vehicles and stealing property; robbery of persons and businesses; etc. The sale, possession, and use of illegal narcotics impact the entire community in some fashion, and it is the Departments responsibility to try and curtail this pervasive problem.

As it pertains to employing federal grant funds for compensating informants, the documentation provided by the coalition is accurate on its face; however, such compensation to informants is small and necessary. First of all, no informant is making a living by working with local law enforcement. Secondly, drug investigations try to pierce the veil of violent criminal networks, and confidential informants who can move within criminal circles to gather critical information are a legal, important, and necessary component. These people are putting their very lives at risk by cooperating with the police, and a small monetary compensation is appropriate.

For the record, the Justice Assistance Grant (JAG) funding that is received by the Durham Police Department is shared with the Durham County Sheriff's Department and is awarded by the Federal Government based upon crime data reported via the Uniform Crime Reporting system. The metrics are established by the Federal Government, not the Durham Police Department. The coalition is giving the impression that this funding is being spent solely on making low-level marijuana arrests; however, once again there is more to the story. This grant provides more than just informant funds and drug investigation funding. For example, since 2005, this funding source has supported:

- The Sheriff's Department's Gang Resistance Education and Training (GREAT) life-skills program
- Improvements in the Sheriff's Department's technology and software to include video visitation capability at the jail
- An Assistant District Attorney position was funded to prosecute gang crimes
- An assistant District Attorney position was funded to specialize in prosecuting Domestic Violence cases
- Crime Prevention and Victim Services Programs
- Partners Against Crime
- A jail-based offender re-entry program
- The Sheriff's Office Juvenile Assistance Program
- Funding for the Sheriff's Office Gun Safety Team
- Additional security enhancements for the Judicial/Detention Center
- Equipment and Training for First Responder Specialty Units

**These are costs that Durham City and County taxpayers didn't have to provide. In short, the funds are used to support broad-based crime fighting and crime prevention efforts and this funding spares the City and County taxpayers some of that expense.**

One important topic that hasn't been a part of this discussion is the personal accountability of the individual. For every person, black or white, who is arrested for possessing marijuana there are thousands of others who are not. The difference is not law enforcement; the difference is that many people choose not to possess illegal drugs; while some others choose to do so and gamble that they won't be caught. It is the individual who is responsible for making the choice to commit a crime. **Every individual has total control over whether or not they ever get charged with possessing marijuana or any other illegal drug long before they ever encounter the police – they can simply choose not to engage in such behavior.** In point of fact, the police action is not THE problem; the police action is merely one response to the problem. The Department acknowledges that a marijuana arrest at a young age can have long-lasting negative effects on a person's life and contributes to recidivism. This is one reason that the Department gladly agreed to participate in a new diversion program for 16 and 17-year olds. In the end, less policing is not the answer to this problem; intervention prior to and abstinence from the use of illegal drugs will negate the need for police action.

## License Checkpoints

In a handout dated January 22, 2014 the coalition quoted Deputy Chief Marsh in reference to license checking stations, or license checks. It was not the Deputy Chief's intention to imply or infer that Durham Police Officers initiate license checking stations FOR THE PURPOSE OF deterring drug activity or any other crime for that matter. The coalition rightly pointed out that it is well established legal doctrine that license checking stations for the purpose of general crime control are unacceptable and referenced *Mills v. D.C.*, 571 F.3d 1304, 1312 (D.C. Cir. 2009), cited with approval in *United States v. Henson*, 351 F.App'x 818, 820 (4<sup>th</sup> Cir. 2009). Just as a point of clarification, in the Mills case, the police response to out of control violence in a particular neighborhood in Washington D.C. was to ring that neighborhood with officers and establish and maintain checkpoints on the city streets at each point of entry into that particular neighborhood. Verification of a genuine need to enter that particular neighborhood was required or the police would deny entry. The Durham Police Department has not engaged in any such tactics or operations and NO correlation can be made between random license checking stations and the police action in the Mills case. In the Henson case, the arrestee appealed his arrest and imprisonment on multiple charges and moved to suppress evidence uncovered during a traffic stop at a license checkpoint. The appeals were denied at every turn and he was ultimately sentenced to a lengthy prison term.

According to the Department's legal advisor, at the end of November 2000, the U.S. Supreme Court decided the case of *Indianapolis v. Edmond*. The Court ruled that law enforcement may not establish a checkpoint for the primary purpose of detecting evidence of general criminal wrongdoing. This case was summarized and discussed immediately with the officers via a legal bulletin. Additionally, several other training bulletins have been provided to the Department's officers over the years that discuss (via court decisions) the legally accepted purposes for establishing license checking stations. Also, all officers statewide have received annual in-service legal update training each year since 2005, and several of those blocks of instruction included training on proper license checking stations. **The fact that license checking stations cannot be initiated for drug enforcement or other general crime prevention purposes is well established within the Durham Police Department.**

In short, Durham Police Officers initiate license checking stations for traffic enforcement purposes. All patrol supervisors have a performance standard that requires them to plan and initiate a certain number of special operations each quarter as a part of their evaluation. While the supervisors are free to be as creative as they wish, traffic enforcement operations via the license checking station are one of the most common types of operations initiated by patrol supervisors and officers. Additionally, where such license checking stations are implemented is at the discretion of the supervisors or officers; however, several things are taken into consideration. Safety to the public and the officers is always the first priority, so selected locations need to be able to accommodate the impending traffic delay without causing havoc. The location also needs to allow for a place for multiple vehicles to pull off the roadway so that officers can conduct further police action, such as writing a citation, without impeding other motorists. It was the Deputy Chief's intent to relay that traffic enforcement operations, including license checking stations, have a collateral impact on other types of crimes in a community. The collateral impact of aggressive traffic enforcement is well documented. For example, Richard Ashton (2007) wrote, "Traffic law enforcement regularly identifies those who have perpetrated – or who intend to commit – serious criminal acts. The Deputy Chief poorly articulated his example and the department takes ownership of any misconception derived from that misstatement.

## **Expressing Concerns About Policing**

The spirit of the Durham Police Department's relationship with its community can best be described in the words of Chief Richard Myers:

**“The police have a social contract with the public/community. You give us unparalleled powers and authority through the government – the power to take away a person's liberty, the power to use deadly force – you give us our legitimacy. It is an awesome responsibility. In return we're committing to you not to abuse those powers, not to be excessive in our use of force, and that our integrity and truthfulness comes first.”**

The Durham Police Department embodies that philosophy and recognizes and respects everyone's right to express their concerns about police practices, methods, tactics, etc. The Department would respectfully suggest that in order to reconcile differences and come to some resolution, concerns should be expressed in a constructive manner rather than through public accusations. A constructive dialogue requires several things from all parties:

1. Being willing to actually listen, receive, and process the other viewpoint(s).
2. Being willing to take “no” for an answer.
3. Being willing to accept that you can be wrong.
4. Being willing to disagree without losing the relationship.
5. Being willing to recognize that there can be more than one right answer.

The Durham Police Department welcomes constructive dialogue with anyone whenever necessary.



## **Conclusion**

While this controversy has been challenging for all parties involved, there are some positives that have come forth. The Department would like to reiterate several action steps outlined in prior responses:

- The Department is taking a hard look at itself, its internal controls, and its review processes just to be sure that it is doing all that it can. Consequently, the Department is now trying to develop a method of analyzing its officers' individual traffic stop data more closely and accurately and to review it annually to ensure that its officers are complying with the Department's prohibition against bias-based policing.
- The Department is actively researching training to supplement the State mandated diversity training. The Department is going to be looking for something that addresses hidden or unrealized biases that we all possess and how to best ensure that such biases don't unknowingly impact the officers' decision-making. As it turns out, one such training that was recommended by the coalition was developed and is taught by Dr. Lorie Fridell who was cited extensively in this response. Officers from the Department's Training Division recently travelled to Connecticut to observe a training session and evaluate it. Due to a fortuitous turn of events, the Department's staff was allowed to participate in the class. Consequently, the Department now has two certified trainers and plans are underway to get several more instructors certified before delivering the training to the officers in the department.
- It was discovered that complainants don't really know that officers are actually disciplined when complaints are sustained. This led to the assumption that nothing happened to the officer and the complainant did not necessarily feel vindicated. The Department is trying to explore some

way to get this message out to the greater community without compromising personnel privacy and undermining the employee.

- The Department is actively working on a protocol that will allow it to release some facts and information regarding critical incidents a little sooner depending upon the situation.
- The Department is already partnering with Judge Marcia Morey and others to try and implement a diversion program for 16 and 17-year olds for certain misdemeanor offenses. This looks very promising thus far. For the record, certain first-time misdemeanor drug arrestees are already diverted from prosecution into a program. Upon successful completion, their case is dismissed; however, the defendant will still have to clear their record via the expungement process.
- The Department has begun some very promising dialogue with a couple of groups of clergy in an ongoing effort to maintain public trust while working together to try and address various community issues. Among other things, the possibility for community forums for constructive dialogue has been discussed.
- The Executive Command Staff is scheduled to complete some additional training on media relations on February 25, 2014.

For the record, the Department is not opposed to social activism or activists, nor does it wish to belittle the important work done by groups such as F.A.D.E., the NAACP, and the Southern Coalition. The ability to openly express dissatisfaction with any aspect of government is an important component of a free society. It is the Department's position that the coalition has presented incomplete and misleading data for dramatic emotional impact in an attempt to stir public emotion and prompt knee-jerk policy changes. This appears to be a tactical multi-step plan intended to bring about these changes. The first step was to create a problem, whether real or imagined – in this case, questionable police practices, racial-profiling, discrimination, etc.

The second step was to generate broad opposition to the problem (fear, anxiety, etc.) by pushing the public's emotional buttons via repetitive media statements. Nothing stirs more emotion in a Black community than accusations of discrimination by the police. The third step was to offer the solution(s) to the problem created in the first step – solutions that might not have been considered without the pre-conditioning of the second step. The City Government, the Human Relations Commission, and the public at large should be applauded for not giving in to emotion and taking a measured and deliberate approach in attempting to assess the validity of these allegations.

The Department doesn't claim to be perfect, nor are all of its officers; however, the Department would like to restate several important points made in prior responses so that its position is very clear:

- (1) The Durham Police Department wants to assure the community that it takes all community concerns seriously and it strives to be inclusive rather than dismissive in working together to address such concerns.
- (2) The Durham Police Department does not shy away from constructive criticism of its police practices and methods; however, the Department would respectfully request that any criticism be fair, balanced, and accurate.
- (3) The Durham Police Department wants to reiterate that it does not engage in, or tolerate any type of bias-based or discriminatory policing.
- (4) The Durham Police Department is in no way stating, suggesting, or implying that successful police efforts are an excuse for the mistreatment of any citizen. The Department does not imply or suggest in any way that this is a case of the

ends justifying the means; there is no room in professional law enforcement for that type of thinking.

- (5) The Durham Police Department does respectfully submit that every effort is made to deliver quality police service in response to continually changing needs. The success that has been achieved through partnership with Durham's citizens must now be maintained, and built upon, or we run the risk of losing it.

As stated previously, navigating this public criticism and inquiry has been a challenge, but challenges can also be opportunities in disguise. As a progressive and forward-thinking police agency, the Durham Police Department doesn't want to miss any opportunity to improve itself, its staff, or its methods. While the community unrest created by these allegations has been a test of the strength of police/community partnerships, there have been some benefits derived from the scrutiny and subsequent discussions. The Department would remind our community again that faith and trust are choices. Many years ago this police department, this City Government and this community put our collective faith in a concept called Community Policing, and our citizens chose to put their faith and trust in their police department. Over the years that faith and trust strengthened and grew, the city prospered, and significant progress was made; however, we now find our faith and trust being tested. The Durham Police Department's message to our community is that thanks to the faith and trust that we have placed in each other, we've come far from where we used to be; and we want to encourage our community partners to keep that faith and trust so that together we can keep moving this great city forward.

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